

By: Darby

H.B. No. 3079

A BILL TO BE ENTITLED

1 AN ACT
2 relating to dealer agreements regarding the purchase and sale of
3 certain all-terrain vehicles or equipment or machinery used for
4 agricultural, construction, utility, industrial, mining, forestry,
5 and landscaping purposes.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

7 SECTION 1. The legislature finds that the retail
8 distribution, sales, and rental of agricultural, construction,
9 utility, industrial, mining, outdoor power, forestry, and lawn and
10 garden equipment through the use of independent dealers operating
11 under contract with the equipment suppliers vitally affect the
12 general economy of this state, the public interest, and the public
13 welfare. Therefore, the legislature determines that state
14 regulation of the business relationship between the independent
15 dealers and equipment suppliers as contemplated in the Fair
16 Practices of Equipment Manufacturers, Distributors, Wholesalers,
17 and Dealers Act is necessary and that any action taken in violation
18 of this Act would violate the public policy of this state.

19 SECTION 2. Title 4, Business & Commerce Code, is amended by
20 adding Chapter 57 to read as follows:

1 CHAPTER 57. AGRICULTURAL, CONSTRUCTION, UTILITY, INDUSTRIAL,
2 MINING, FORESTRY, LANDSCAPING, AND OUTDOOR POWER EQUIPMENT DEALER
3 AGREEMENTS

4 SUBCHAPTER A. GENERAL PROVISIONS

5 Sec. 57.001. SHORT TITLE. This chapter may be cited as the
6 Fair Practices of Equipment Manufacturers, Distributors,
7 Wholesalers, and Dealers Act.

8 Sec. 57.002. DEFINITIONS. (a) In this chapter:

9 (1) "Current net parts cost" means an amount equal to
10 the current net parts price of a repair part, less any trade or cash
11 discount typically given to a dealer in the normal, ordinary course
12 of ordering a repair part.

13 (2) "Current net parts price" means:

14 (A) with respect to a repair part in current
15 stock, the price for the repair part listed in the supplier's price
16 list or catalog in effect:

17 (i) when a dealer agreement is terminated
18 or discontinued; or

19 (ii) for purposes of Subchapter F, when the
20 repair part is ordered; and

21 (B) with respect to a repair part that has been
22 superseded, the price for a repair part listed in the supplier's
23 price list or catalog in effect when a dealer agreement is
24 terminated or discontinued that:

25 (i) performs the same function and is for
26 the same purpose as the superseded part; and

27 (ii) is listed under a different part

1 number than the superseded part.

2 (3) "Dealer" means a person who is primarily engaged
3 in the business of:

4 (A) selling or leasing equipment or repair parts
5 for equipment to end users of the equipment; and

6 (B) repairing or servicing equipment.

7 (4) "Dealer agreement" means an oral or written
8 agreement or arrangement, of definite or indefinite duration,
9 between a dealer and a supplier that provides for the rights and
10 obligations of the parties with respect to the purchase or sale of
11 equipment or repair parts.

12 (5) "Dealership" means the retail sale business
13 engaged in by a dealer under a dealer agreement.

14 (6) "Demonstrator" means equipment in a dealer's
15 inventory that:

16 (A) has never been sold at retail; and

17 (B) is or has been made available to a potential
18 customer, as authorized by the supplier, without charge or under a
19 short-term rental agreement for purposes of demonstrating its use
20 and with the intent of encouraging the customer to purchase the
21 equipment.

22 (7) "Equipment":

23 (A) means:

24 (i) all-terrain vehicles, utility task
25 vehicles, or recreational off-highway vehicles, regardless of how
26 the vehicles are used in each case; or

27 (ii) other machinery, equipment, or

1 implements or attachments to the machinery, equipment, or
2 implements used for, or in connection with, any of the following
3 purposes:

4 (a) lawn, garden, golf course,
5 landscaping, or grounds maintenance;

6 (b) planting, cultivating,
7 irrigating, harvesting, or producing agricultural or forestry
8 products;

9 (c) raising, feeding, or tending to
10 livestock or harvesting products from livestock or any other
11 activity in connection with those activities; or

12 (d) industrial, construction,
13 maintenance, mining, or utility activities or applications; and

14 (B) does not mean trailers or self-propelled
15 vehicles designed primarily for the transportation of persons or
16 property on a street or highway.

17 (8) "Family member" means a child or other lineal
18 descendant, a son-in-law, a daughter-in-law, or the spouse of an
19 individual.

20 (9) "Index" means the producer price index for
21 construction machinery series identification number
22 pcu333120333120 published by the Bureau of Labor Statistics of the
23 United States Department of Labor or a successor index measuring
24 substantially similar information.

25 (10) "Inventory" means equipment, repair parts, data
26 processing hardware or software, or specialized service or repair
27 tools.

1 (11) "Net equipment cost" means an amount equal to the
2 sum of the price the dealer actually paid to the supplier for
3 equipment, and:

4 (A) any freight paid by the dealer from the
5 supplier's location to the dealer's location, payable at the cost
6 stated on the invoice, or, if there is no invoice, at the truckload
7 rate in effect when a dealer agreement is terminated; and

8 (B) the set-up cost of labor incurred in
9 preparing the equipment for retail sale or lease, reimbursable at
10 the dealer's standard labor rate charged by the dealer to its
11 customers for non-warranty repair work, unless a supplier has
12 established a reasonable set-up time to prepare the equipment for
13 retail sale or lease, in which case the labor will be reimbursable
14 at an amount equal to the reasonable set-up time in effect as of the
15 date of delivery multiplied by the dealer's standard labor rate.

16 (12) "New equipment" means, for purposes of
17 determining whether a dealer is a single-line dealer, equipment
18 that can be returned to the supplier following termination of a
19 dealer agreement under Subchapter H.

20 (13) "Person" means:

21 (A) an individual, corporation, partnership,
22 limited liability company, company, trust, or any other form of
23 business entity, including any other entity in which a person has a
24 majority interest or of which a person has control; or

25 (B) an officer, director, or other individual who
26 actively controls the activities of an entity described by
27 Paragraph (A).

1 (14) "Repair parts" means all parts related to the
2 repair of equipment, including superseded parts.

3 (15) "Single-line dealer" means a dealer that:

4 (A) has purchased construction, industrial,
5 forestry, or mining equipment from a single supplier constituting
6 75 percent or more of the dealer's total new equipment that is
7 construction, industrial, forestry, or mining equipment, computed
8 on the basis of net equipment cost; and

9 (B) has a total annual average sales volume of
10 equipment acquired from the single-line supplier in excess of \$25
11 million for the five calendar years immediately preceding the
12 applicable determination date, provided, however, that the \$25
13 million threshold will be increased as of September 1 of each year
14 by an amount equal to the threshold on the date the determination is
15 made multiplied by the percentage increase in the index from
16 January of the immediately preceding year to January of the year the
17 determination is made.

18 (16) "Single-line dealer agreement" means a dealer
19 agreement between a single-line dealer and a single-line supplier
20 that only provides for the rights and obligations of the parties
21 with respect to the purchase and sale of construction, forestry,
22 industrial, or mining equipment.

23 (17) "Single-line supplier" means the supplier that is
24 selling to a single-line dealer construction, industrial,
25 forestry, or mining equipment constituting 75 percent of the
26 single-line dealer's new equipment that consists of construction,
27 industrial, forestry, and mining equipment.

1 (18) "Specialty agricultural equipment" means
2 equipment that is designed for and used in:

3 (A) planting, cultivating, irrigating,
4 harvesting, and producing agricultural products; or

5 (B) raising, feeding, or tending to livestock or
6 harvesting products from livestock.

7 (19) "Specialty agricultural equipment supplier"
8 means a supplier of specialty agricultural equipment whose:

9 (A) gross sales revenue to the dealer is less
10 than the threshold amount;

11 (B) product line does not include farm tractors
12 or combines; and

13 (C) sales of outdoor power equipment to the
14 dealer do not exceed 10 percent of the supplier's total sales to the
15 dealer during the one-year period ending on the last day of the
16 calendar month immediately preceding the effective date of the
17 termination of the dealer agreement.

18 (20) "Supplier" means:

19 (A) a person engaged in the business of the
20 manufacture, assembly, or wholesale distribution of equipment or
21 repair parts; or

22 (B) the person's successor in interest,
23 including:

24 (i) a receiver, trustee, liquidator, or
25 assignee of the person;

26 (ii) a surviving corporation resulting from
27 a merger, liquidation, or reorganization of the person; or

1 (iii) a purchaser of assets or stock of the
2 person, such as a purchaser of all or substantially all of the
3 inventory of the person or any division or product line of the
4 person.

5 (21) "Terminate" or "termination" means to terminate,
6 cancel, fail to renew, or substantially change the competitive
7 circumstances of a dealer agreement.

8 (22) "Threshold amount" means the lesser of 10 percent
9 of the dealer's gross sales revenue or \$350,000, based on the net
10 sales of the dealership during the one-year period ending on the
11 last day of the calendar month immediately preceding the effective
12 date of the termination of the dealer agreement, provided, however,
13 that the \$350,000 amount must be increased each year on September 1
14 by an amount equal to the amount on the year in which the
15 determination is made multiplied by the percentage increase in the
16 index from January of the immediately preceding year to January of
17 the year in which the determination is made.

18 Sec. 57.003. WAIVER OF CHAPTER VOID. An attempted waiver of
19 a provision of this chapter or of the application of this chapter is
20 void.

21 [Sections 57.004-57.050 reserved for expansion]

22 SUBCHAPTER B. PROVISIONS REGARDING DEALER AGREEMENT OR DEALERSHIP

23 Sec. 57.051. CERTAIN PROVISIONS VOID. The following
24 provisions contained in a dealer agreement are void:

25 (1) any provision that purports to elect the
26 application of a law of another state instead of the law of this
27 state; and

1 (2) any provision that requires a dealer to pay
2 attorney's fees incurred by the supplier.

3 Sec. 57.052. CHANGE IN OWNERSHIP OR FINANCIAL STRUCTURE. A
4 supplier may not prevent, by contract or otherwise, a dealer from
5 changing its capital structure or the means by or through which the
6 dealer finances its operations, if:

7 (1) the dealer gives prior notice of the change to the
8 supplier; and

9 (2) the dealer at all times meets any reasonable
10 capital standards required by the supplier pursuant to a right
11 granted in the dealer agreement and imposed on similarly situated
12 dealers.

13 Sec. 57.053. RELEASE OF LIABILITY PROHIBITED. A supplier
14 may not require a dealer to assent to a release, assignment,
15 novation, waiver, or estoppel that would release any person from
16 liability imposed by this chapter.

17 [Sections 57.054-57.100 reserved for expansion]

18 SUBCHAPTER C. SALE, TRANSFER, OR OWNERSHIP OF DEALERSHIP

19 Sec. 57.101. TRANSFER OF INTEREST IN DEALERSHIP BY
20 SUCCESSION; SINGLE-LINE DEALER AGREEMENTS. (a) This section
21 applies only to single-line dealer agreements.

22 (b) If a dealer dies, a supplier has 90 days in which to
23 consider and make a determination on a request by a family member to
24 enter into a new dealer agreement to operate the dealership. If the
25 supplier determines that the requesting family member is not
26 acceptable, the supplier shall provide the family member with a
27 written notice of its determination with the stated reasons for

1 nonacceptance. This section does not entitle an heir, personal
2 representative, or family member of the dealer to operate a
3 dealership without the specific written consent of the supplier.

4 (c) Notwithstanding Subsections (a) and (b), if a supplier
5 and dealer have previously executed an agreement concerning
6 succession rights before the dealer's death, and if that agreement
7 is still in effect, the agreement shall be observed even if it
8 designates someone other than the surviving spouse or an heir of the
9 decedent as the successor.

10 Sec. 57.102. APPROVAL OF SALE OR TRANSFER OF BUSINESS AT
11 DEALER'S REQUEST. (a) This section applies only to a dealer
12 agreement that is not a single-line dealer agreement.

13 (b) If a supplier has contractual authority to approve or
14 deny a request for the sale or transfer of a dealer's business or an
15 equity ownership interest in the dealer's business, a dealer may
16 request that the supplier approve or deny a request for the sale or
17 transfer of a dealer's business or an equity ownership interest in
18 the dealer's business to a proposed buyer or transferee. The
19 dealer's request must be in writing and must include character
20 references and reasonable financial, personal background, and work
21 history information with respect to the proposed buyer or
22 transferee.

23 (c) Not later than the 60th day after receipt of a request
24 under Subsection (b), the supplier shall either approve the sale or
25 transfer or send a written response to the dealer stating the
26 supplier's denial of the request and the specific reasons for the
27 denial. The request is considered approved if the supplier does not

1 approve or deny the request by the deadline.

2 (d) A supplier may deny a request made under this section
3 only if the proposed buyer or transferee fails to meet the
4 reasonable requirements consistently imposed by the supplier for
5 purposes of determining whether to approve a new dealer or a request
6 for approval of a sale or transfer of a dealer's business or equity
7 ownership in the dealer's business.

8 Sec. 57.103. APPROVAL OF SALE OR TRANSFER OF BUSINESS AT
9 REQUEST OF PERSONAL REPRESENTATIVE. (a) This section applies only
10 to a dealer agreement that is not a single-line dealer agreement.

11 (b) If a dealer dies and the supplier has contractual
12 authority to approve or deny a request for the sale or transfer of a
13 dealer's business or an equity ownership interest in the dealer's
14 business, the personal representative of the dealer's estate, or
15 any other person with authority to transfer the dealer's assets,
16 must submit to the supplier a written request for approval of the
17 sale or transfer of the business or ownership interest not later
18 than the 180th day after the date of the dealer's death.

19 (c) If a timely request for approval of a sale or transfer is
20 made as provided by Subsection (b), the supplier must approve or
21 deny the request in accordance with the procedures prescribed by
22 Sections 57.102(c) and (d) for a supplier's approval or denial of a
23 request for a sale or transfer made under Section 57.102.

24 (d) Notwithstanding any other provision of this chapter to
25 the contrary, any attempt by the supplier to terminate the dealer
26 agreement as a result of the death of a dealer will be delayed until
27 there has been compliance with the terms of this section or the

1 180-day period has expired, as applicable.

2 [Sections 57.104-57.150 reserved for expansion]

3 SUBCHAPTER D. TERMINATION OF AGREEMENTS OTHER THAN SINGLE-LINE

4 DEALER AGREEMENTS

5 Sec. 57.151. APPLICABILITY OF SUBCHAPTER. This subchapter
6 applies only to a dealer agreement that is not a single-line dealer
7 agreement.

8 Sec. 57.152. TERMINATION BY DEALER; WRITTEN NOTICE. A
9 dealer must give the supplier at least 30 days' prior written notice
10 of termination.

11 Sec. 57.153. TERMINATION BY SUPPLIER; GOOD CAUSE REQUIRED.
12 A supplier may not terminate a dealer agreement without good cause.

13 Sec. 57.154. GOOD CAUSE DETERMINATION. (a) Except as
14 specifically provided otherwise by this chapter, good cause for
15 termination of a dealer agreement exists for purposes of this
16 subchapter if:

17 (1) the dealer fails to substantially comply with
18 essential and reasonable requirements imposed on the dealer under
19 the terms of the dealer agreement, provided that such requirements
20 are not different from requirements imposed on other similarly
21 situated dealers in this state either by their terms or by the
22 manner in which they are enforced;

23 (2) the dealer or dealership has transferred a
24 controlling ownership interest in its business without the
25 supplier's consent;

26 (3) the dealer has filed a voluntary petition in
27 bankruptcy or an involuntary petition in bankruptcy has been filed

1 against the dealer and has not been discharged earlier than the 31st
2 day after the date the petition was filed;

3 (4) there has been a sale or other closeout of a
4 substantial part of the dealer's assets related to the business;

5 (5) there has been commencement of an action or
6 proceeding for the dissolution or liquidation of the dealership;

7 (6) there has been a change in dealer or dealership
8 locations without the prior written approval of the supplier;

9 (7) the dealer has defaulted under the terms of any
10 chattel mortgage or other security agreement between the dealer and
11 the supplier;

12 (8) there has been a revocation of any guarantee of the
13 dealer's present or future obligations to the supplier, except as
14 provided by Subsection (b);

15 (9) the dealer has failed to operate in the normal
16 course of business for seven consecutive days or has otherwise
17 abandoned the dealer's business;

18 (10) the dealer has been convicted of or pleaded nolo
19 contendere to a felony affecting the relationship between the
20 dealer and supplier;

21 (11) the dealer has engaged in conduct that is
22 injurious or otherwise detrimental to:

23 (A) the dealer's customers;

24 (B) the public welfare; or

25 (C) the representation or reputation of the
26 supplier's product; or

27 (12) the dealer has consistently failed to meet and

1 maintain the supplier's requirements for reasonable standards and
2 performance objectives, so long as the supplier has provided the
3 dealer with reasonable standards and performance objectives based
4 on the supplier's experience in other comparable market areas.

5 (b) Good cause is not considered to exist for purposes of
6 Subsection (a)(8) if:

7 (1) a person revokes any guarantee of the dealer's
8 obligations to the supplier in connection with or following the
9 transfer of the person's entire ownership interest in the
10 dealership; and

11 (2) the supplier does not require the person to
12 execute a new guarantee of the dealer's present or future
13 obligations to the supplier in connection with the transfer of the
14 person's ownership interest in the dealership.

15 Sec. 57.155. NOTICE OF TERMINATION; CORRECTION OF
16 DEFICIENCY. (a) Except as otherwise provided by this section, a
17 supplier must provide a dealer written notice of termination of a
18 dealer agreement at least 180 days before the effective date of
19 termination. The notice must state all reasons constituting good
20 cause for the termination and that the dealer has 60 days in which
21 to cure any claimed deficiency. If the deficiency is cured within
22 60 days, the notice will be void.

23 (b) A supplier, other than a specialty agricultural
24 equipment supplier, may not terminate a dealer agreement for the
25 reason stated in Section 57.154(a)(12) unless the supplier gives
26 the dealer notice of the action at least two years before the
27 effective date of the termination. If the dealer achieves the

1 supplier's requirements for reasonable standards or performance
2 objectives before the expiration of the two-year notice period, the
3 notice will be void and the dealer agreement will continue in
4 effect.

5 (c) The notice and right to cure provisions in this section
6 do not apply if the reason for termination is for any reason stated
7 in Sections 57.154(a)(1)-(11).

8 [Sections 57.156-57.200 reserved for expansion]

9 SUBCHAPTER E. TERMINATION OF SINGLE-LINE DEALER AGREEMENTS

10 Sec. 57.201. APPLICABILITY OF SUBCHAPTER. This subchapter
11 applies only to a single-line dealer agreement.

12 Sec. 57.202. TERMINATION BY SUPPLIER; GOOD CAUSE REQUIRED.
13 No supplier may terminate a dealer agreement without good cause.

14 Sec. 57.203. GOOD CAUSE DETERMINATION. (a) For purposes of
15 this subchapter, "good cause" means failure by a dealer to comply
16 with requirements imposed on the dealer by the dealer agreement if
17 the requirements are not different from those requirements imposed
18 on other similarly situated dealers.

19 (b) In addition to the good cause reason for termination
20 stated in Subsection (a), good cause for termination of a dealer
21 agreement exists when:

22 (1) there has been a closeout or sale of a substantial
23 part of the dealer's assets related to the equipment business;

24 (2) there has been commencement of a dissolution or
25 liquidation of the dealer;

26 (3) the dealer has changed its principal place of
27 business or has added additional locations without the supplier's

1 prior approval, which shall not be unreasonably withheld;

2 (4) the dealer has substantially defaulted under a
3 chattel mortgage or other security agreement between the dealer and
4 the supplier or there has been a revocation or discontinuance of a
5 guarantee of a present or future obligation of the dealer to the
6 supplier;

7 (5) the dealer has failed to operate in the normal
8 course of business for seven consecutive days or has otherwise
9 abandoned its business;

10 (6) the dealer has been convicted of or pleaded guilty
11 to a felony affecting the relationship between the dealer and
12 supplier; or

13 (7) the dealer transfers an interest in the dealership
14 or a person with a substantial interest in the ownership or control
15 of the dealership, including an individual proprietor, partner, or
16 major shareholder, withdraws from the dealership or dies, or a
17 substantial reduction occurs in the interest of a partner or major
18 shareholder in the dealership, provided, however, good cause does
19 not exist if the supplier consents to an action described by this
20 subdivision.

21 Sec. 57.204. NOTICE OF TERMINATION; CORRECTION OF
22 DEFICIENCY. (a) Except as provided by Subsection (b) and Section
23 57.205, a supplier shall provide a dealer with at least 90 days'
24 written notice of termination. The notice must state all reasons
25 constituting good cause for the termination and state that the
26 dealer has 60 days in which to cure any claimed deficiency. If the
27 deficiency is cured within 60 days, the notice will be void.

1 (b) Notwithstanding Subsection (a), if the good cause
2 reason for termination is due to the dealer's failure to meet or
3 maintain the supplier's requirements for market penetration, a
4 reasonable period of time has existed where the supplier has worked
5 with the dealer to gain the desired market share.

6 Sec. 57.205. NOTICE OF TERMINATION NOT REQUIRED UNDER
7 CERTAIN CIRCUMSTANCES. The notice and right to cure provisions
8 under Section 57.204 do not apply if the reason for termination is
9 contained in Sections 57.203(b)(1)-(7).

10 [Sections 57.206-57.250 reserved for expansion]

11 SUBCHAPTER F. WARRANTY CLAIMS

12 Sec. 57.251. DEFINITION OF TERMINATE AND TERMINATION. For
13 purposes of this subchapter, "terminate" and "termination" do not
14 include the phrase substantially change the competitive
15 circumstances of a dealer agreement.

16 Sec. 57.252. APPLICABILITY OF SUBCHAPTER; CONFLICT WITH
17 SUBCHAPTER. (a) Sections 57.253, 57.254, and 57.255 apply to a
18 warranty claim submitted by a dealer who has complied with the
19 supplier's reasonable policies and procedures for reimbursement of
20 the warranty claim and the claim is a warranted claim under the
21 supplier's warranty policy.

22 (b) A supplier's warranty reimbursement policies and
23 procedures are considered unreasonable to the extent of any
24 conflict with this subchapter.

25 Sec. 57.253. WARRANTY CLAIM. (a) This section applies to a
26 warranty claim submitted by a dealer to the supplier:

27 (1) while the dealer agreement is in effect; or

1 (2) not later than the 60th day after the termination
2 or expiration date of the dealer agreement, if the claim is for work
3 performed before the effective date of the termination or
4 expiration.

5 (b) Not later than the 45th day after the date a supplier
6 receives a warranty claim from a dealer, the supplier shall accept
7 or reject the claim by providing written notice to the dealer. A
8 claim not rejected before that deadline is considered accepted.

9 (c) If the warranty claim is accepted, the supplier shall
10 pay or credit to the dealer's account all amounts owed to the dealer
11 with respect to the accepted claim not later than the 30th day after
12 the date the claim is accepted.

13 (d) If the supplier rejects the warranty claim, the supplier
14 shall give the dealer written or electronic notice of the grounds
15 for rejection of a rejected claim, which must be consistent with the
16 supplier's grounds for rejection of warranty claims of other
17 dealers, both in the terms and manner of enforcement.

18 (e) If no grounds for rejection of a rejected claim are
19 given to the dealer, the claim is considered accepted.

20 Sec. 57.254. RESUBMISSION OF WARRANTY CLAIM. If a warranty
21 claim was rejected on the ground that the dealer failed to properly
22 follow the procedural or technical requirements for submission of a
23 warranty claim, the dealer may resubmit the claim in proper form not
24 later than the 30th day after the date the dealer receives notice of
25 the claim's rejection.

26 Sec. 57.255. PAYMENT OF WARRANTY CLAIM. Warranty work
27 performed by the dealer shall be compensated in accordance with the

1 reasonable and customary amount of time required to complete the
2 work, expressed in hours and fractions of hours, multiplied by the
3 dealer's established customer hourly retail labor rate for
4 non-warranty repair work, which must have previously been made
5 known to the supplier. Parts used in warranty repair work shall be
6 reimbursed at the current net parts cost plus 15 percent.

7 Sec. 57.256. WARRANTY CLAIM FOR CERTAIN REPAIR WORK OR
8 INSTALLATION OF REPLACEMENT PARTS. Any repair work or installation
9 of replacement parts performed with respect to inventory equipment
10 of a dealer or with respect to equipment of a dealer's customers, at
11 the request of a supplier, including work performed under a product
12 improvement program, constitutes a warranty claim for which the
13 dealer must be paid under this subchapter.

14 Sec. 57.257. AUDIT OF WARRANTY CLAIMS. (a) Except as
15 provided by Subsection (b), a supplier may audit a warranty claim
16 submitted by a dealer until the first anniversary of the date the
17 claim was paid and may charge back the amount of any claim that is
18 shown by audit to have been misrepresented.

19 (b) If an audit conducted under this section shows that a
20 warranty claim has been misrepresented, the supplier may audit any
21 other warranty claims submitted by the affected dealer within the
22 three-year period ending on a date a claim is shown by audit to be
23 misrepresented.

24 Sec. 57.258. ALTERNATE REIMBURSEMENT TERMS ENFORCEABLE.

25 (a) Sections 57.253, 57.254, and 57.255 do not apply if the terms
26 of a written dealer agreement between the parties require the
27 supplier to compensate the dealer for warranty labor costs either

1 as:

2 (1) a discount in the price of the equipment to the
3 dealer, subject to Subsection (b); or

4 (2) a lump-sum payment made to the dealer not later
5 than the 90th day after the date the supplier's new equipment is
6 sold to the dealer, subject to Subsection (b).

7 (b) The discount or lump-sum payment under Subsection (a)
8 must be or result in an amount that is not less than five percent of
9 the suggested retail price of the equipment.

10 (c) The alternate reimbursement terms of a dealer agreement
11 that comply with Subsections (a) and (b) are enforceable.

12 (d) This section does not affect the supplier's obligation
13 to reimburse the dealer for parts in accordance with Section
14 57.255.

15 [Sections 57.259-57.300 reserved for expansion]

16 SUBCHAPTER G. DELIVERY, SALE, AND RETURN OF EQUIPMENT

17 Sec. 57.301. COERCED ORDERS, DELIVERIES, OR REFUSALS TO
18 PURCHASE. (a) A supplier may not coerce, compel, or require a
19 dealer to accept delivery of equipment or a repair part that has not
20 been voluntarily ordered by the dealer, unless:

21 (1) the equipment or repair part is a safety feature
22 required by the supplier or applicable law; or

23 (2) the dealer is otherwise required by applicable law
24 to accept the delivery.

25 (b) A supplier may not coerce a dealer to refuse purchase of
26 equipment manufactured by another supplier.

27 (c) It shall not be considered a violation of this section

1 if the supplier requires a dealer to have or provide separate
2 facilities, financial statements, or sales staff for major
3 competing product lines if the supplier gives the dealer at least
4 three years' notice of such a requirement.

5 Sec. 57.302. CONDITIONAL PURCHASES OF GOODS AND SERVICES.

6 (a) A supplier may not condition the sale of equipment, repair
7 parts, or goods or services to a dealer on the purchase of other
8 goods or services.

9 (b) This section does not prohibit a supplier from requiring
10 a dealer to purchase all repair parts, special tools, or training
11 reasonably necessary to maintain the safe operation or quality of
12 operation in the field of any equipment offered for sale by the
13 dealer.

14 Sec. 57.303. EQUIPMENT REPRESENTED AS AVAILABLE FOR
15 IMMEDIATE DELIVERY. A supplier may not refuse to deliver, in
16 reasonable quantities and within a reasonable time after receipt of
17 a dealer's order, to any dealer having a dealer agreement for the
18 retail sale of new equipment sold or distributed by the supplier,
19 equipment covered by the dealer agreement and specifically
20 advertised or represented by the supplier as available for
21 immediate delivery, unless the refusal is due to:

22 (1) the supplier's prudent and reasonable restrictions
23 on extensions of credit to the dealer;

24 (2) a business decision by the supplier to limit the
25 production volume of the equipment; or

26 (3) an act of nature, work stoppage or delay due to a
27 strike or labor difficulty, a bona fide shortage of materials,

1 freight embargo, or other cause over which the supplier has no
2 control.

3 Sec. 57.304. DISCRIMINATION IN ORDERS. A supplier may not
4 discriminate, directly or indirectly, in filling an order placed by
5 a dealer for retail sale or lease of new equipment under a dealer
6 agreement as between dealers of the same product line.

7 Sec. 57.305. DISCRIMINATION IN PRICES OF NEW EQUIPMENT.

8 (a) Except as provided by Subsection (b), a supplier may not
9 discriminate, directly or indirectly, in the price among different
10 dealers with respect to a purchase of equipment or a repair part of
11 like grade and quality and identical brand, where the effect of such
12 discrimination may be to:

13 (1) substantially lessen competition;

14 (2) tend to create a monopoly in any line of commerce;

15 or

16 (3) injure, destroy, or prevent competition with any
17 dealer who either grants or knowingly receives the benefit of such
18 discrimination.

19 (b) A supplier may charge a different price among dealers
20 for purchases described by Subsection (a) if:

21 (1) the price difference is due to differences in the
22 cost of manufacture, sale, or delivery of the equipment or repair
23 part;

24 (2) the supplier can show that the lower price was made
25 in good faith to meet an equally low price of a competitor; or

26 (3) the price difference is related to the volume of
27 equipment purchased by dealers or market share obtained by dealers.

1 [Sections 57.306-57.350 reserved for expansion]

2 SUBCHAPTER H. REPURCHASE OR OTHER OBLIGATIONS FOLLOWING

3 CANCELLATION OR NONRENEWAL OF AGREEMENT

4 Sec. 57.351. DEFINITION OF TERMINATE AND TERMINATION. For
5 purposes of this subchapter, "terminate" and "termination" do not
6 include the phrase substantially change the competitive
7 circumstances of a dealer agreement.

8 Sec. 57.352. APPLICABILITY OF SUBCHAPTER TO SEVERAL
9 BUSINESS LOCATIONS COVERED BY SAME AGREEMENT. If a dealer has more
10 than one of its business locations covered by the same dealer
11 agreement, this subchapter applies to the repurchase of the
12 dealer's inventory at the particular business location being closed
13 unless the closing occurs without the permission of the supplier.

14 Sec. 57.353. PAYMENTS OR CREDITS. (a) When a supplier or
15 dealer terminates or otherwise discontinues the dealer agreement
16 entered into between the two parties, the supplier shall pay to the
17 dealer, or credit to the dealer's account, if the dealer has
18 outstanding any sums owing the supplier:

19 (1) an amount equal to 100 percent of the net equipment
20 cost of all new, unsold, and undamaged equipment, less a downward
21 adjustment for new, unsold, and undamaged equipment between 24 and
22 36 months old to reflect a reasonable allowance for refurbishment
23 and the price another dealer will pay for the equipment;

24 (2) an amount equal to 100 percent of the net equipment
25 cost of all unsold, undamaged demonstrators, less a downward
26 adjustment to reflect a reasonable allowance for refurbishment and
27 the price another dealer will pay for the equipment;

1 (3) an amount equal to 90 percent of the current net
2 parts cost of new, unsold, and undamaged repair parts previously
3 purchased from the supplier and held by the dealer on the date that
4 the dealer agreement is terminated or expires;

5 (4) an amount equal to five percent of the current net
6 parts price of all repair parts returned to the supplier to
7 compensate the dealer for the handling, packing, and loading of
8 those repair parts for return to the supplier, unless the supplier
9 elects to perform the handling, packing, and loading of the repair
10 parts itself;

11 (5) an amount equal to the fair market value of any
12 specific data processing hardware or software that the supplier
13 required the dealer to acquire or purchase to satisfy the
14 requirements of the supplier, including computer equipment
15 required and approved by the supplier to communicate with the
16 supplier; and

17 (6) an amount equal to 75 percent of the net cost,
18 including shipping, handling, and set-up fees, of all specialized
19 service or repair tools that:

20 (A) were previously purchased pursuant to the
21 requirements of the supplier within 15 years before the date of the
22 applicable notification of termination of the dealer agreement; and

23 (B) are unique to the supplier's product line and
24 are complete and in good operating condition.

25 (b) Fair market value of property subject to repurchase
26 under Subsection (a)(5) is considered to be the acquisition cost of
27 the property, including any shipping, handling, and set-up fees,

1 less straight line depreciation of the acquisition cost over a
2 three-year period. If the dealer purchased data processing
3 hardware or software that exceeded the supplier's minimum
4 requirements, the acquisition cost of the data processing hardware
5 or software for purposes of this section is considered to be the
6 acquisition cost of hardware or software of similar quality that
7 did not exceed the minimum requirements of the supplier.

8 (c) Notwithstanding any other provision of this chapter,
9 with respect to machines with hour meters, demonstrators with less
10 than 50 hours of use will be considered new, unsold, undamaged
11 equipment subject to repurchase under this section.

12 (d) On payment of the amount due under this section or on
13 credit to the dealer's account of the amount required by this
14 section, title to all inventory repurchased under this subchapter
15 is transferred to the supplier, and the supplier is entitled to
16 possession of the inventory.

17 Sec. 57.354. LATE PAYMENT OR CREDIT. (a) All payments or
18 allowances of credit due to a dealer shall be paid or credited
19 within 90 days after receipt by the supplier of property required to
20 be repurchased under this subchapter.

21 (b) Any payment or allowance of credit due a dealer that is
22 not paid within the 90-day period will accrue interest at the
23 maximum rate allowed by law.

24 (c) The supplier may withhold payments due under this
25 subchapter during the period in which the dealer fails to comply
26 with its contractual obligation to remove any signage indicating
27 that the dealer is an authorized dealer of the supplier.

1 Sec. 57.355. LIABILITY. (a) A supplier who refuses to
2 repurchase any inventory covered under this chapter after
3 termination or discontinuation of the dealer agreement is liable to
4 the dealer for:

5 (1) 110 percent of the amount that would have been due
6 for the inventory had the supplier timely complied with the
7 requirements of this chapter;

8 (2) any freight charges paid by the dealer;

9 (3) any accrued interest; and

10 (4) the actual costs of any court or arbitration
11 proceeding incurred by the dealer, including attorney's fees or
12 arbitrator fees.

13 (b) The supplier and dealer will each pay 50 percent of the
14 costs of freight, at truckload rates, to ship any equipment or
15 repair parts returned to the supplier pursuant to this chapter.

16 (c) Notwithstanding any provision to the contrary in the
17 Uniform Commercial Code, the dealer retains title to and has a first
18 and prior lien against all inventory returned by the dealer to the
19 supplier under this chapter until the dealer is paid all amounts
20 owed by the supplier under this subchapter for the repurchase of the
21 inventory required under this chapter, and the supplier must hold
22 the proceeds of the inventory in trust for the dealer's benefit.

23 Sec. 57.356. CONSTRUCTION OF SUBCHAPTER; CREDITOR'S
24 CLAIMS. This subchapter may not be construed to affect any security
25 interest the supplier may have in the inventory of the dealer, and
26 any repurchase of the dealer's inventory under this subchapter may
27 not be subject to the claims of any secured or unsecured creditor of

1 the supplier or any assignee of the supplier until the dealer has
2 received full payment or credit, as applicable, under this
3 subchapter.

4 Sec. 57.357. AGREEMENT TERMINATED BY DEALER;
5 INAPPLICABILITY OF SUBCHAPTER TO CERTAIN SPECIALTY SUPPLIERS. (a)
6 This subchapter does not apply to a specialty agricultural
7 equipment supplier if the dealer terminates the dealer agreement
8 without good reason. A dealer has good reason to terminate the
9 dealer agreement for any of the following reasons:

10 (1) the death or disability of a majority owner of the
11 dealership;

12 (2) the dealership terminates the dealer agreement
13 and:

14 (A) substantially all of the dealership assets or
15 all shares of stock of the dealership are sold to a new owner; and

16 (B) no owner of the terminated dealership
17 continues to own an interest in the continuing dealership;

18 (3) the filing of bankruptcy by or against the
19 dealership that has not been discharged within 30 days after the
20 date of the filing, the appointment of a receiver, or an assignment
21 for the benefit of creditors; or

22 (4) the specialty agricultural equipment supplier:

23 (A) abandons the market or withdraws from the
24 market by no longer selling to the dealer a type of equipment
25 previously sold to the dealer that constituted a material part of
26 the specialty agricultural equipment sold by the supplier;

27 (B) consistently sells products to the dealer

1 that are defective or breach the implied warranty of
2 merchantability;

3 (C) consistently fails to:

4 (i) provide adequate product support for
5 the type and use of the product, including technical assistance,
6 operator and repair manuals, and part lists and diagrams;

7 (ii) provide adequate training required by
8 the supplier for maintenance, repair, or use of the supplier's
9 products; or

10 (iii) provide marketing and marketing
11 support for the supplier's product if marketing is a requirement of
12 the dealer agreement;

13 (D) consistently fails to meet the supplier's
14 warranty obligations to the dealer as required by contract or law,
15 including obligations under this chapter;

16 (E) has engaged in conduct that is injurious or
17 detrimental to the dealer's customers, the public welfare, or the
18 dealer's reputation;

19 (F) has made material misrepresentations to the
20 dealer or has falsified a record;

21 (G) has breached the dealer agreement; or

22 (H) has violated this chapter.

23 (b) Whether a supplier qualifies as a specialty
24 agricultural equipment supplier for purposes of this section is
25 determined on a case-by-case basis depending on the sales of the
26 applicable dealer and the sales to the applicable dealer by the
27 specialty agricultural equipment supplier.

1 (c) This subchapter may not be construed to limit a
2 specialty agricultural equipment supplier's obligation to
3 repurchase a dealer's inventory as provided by this section if the
4 supplier terminates or otherwise discontinues the dealer
5 agreement.

6 Sec. 57.358. EXCEPTIONS. (a) A supplier is not required to
7 repurchase from a dealer:

8 (1) a repair part that, except as provided by
9 Subsection (b), is in a broken or damaged package;

10 (2) a repair part that because of its condition cannot
11 be resold as a new part without repackaging or reconditioning;

12 (3) any inventory for which the dealer is unable to
13 furnish evidence, satisfactory to the supplier, of clear title,
14 free and clear of all claims, liens, and encumbrances unless the
15 inventory will be free and clear of all claims, liens, and
16 encumbrances immediately on payment by the supplier of amounts due
17 in this subchapter to the lienholders;

18 (4) any inventory that the dealer wants to keep,
19 provided the dealer has a contractual right to keep the inventory;

20 (5) equipment delivered to the dealer before the
21 beginning of the 36-month period preceding the date of notification
22 of termination; and

23 (6) equipment or a repair part that:

24 (A) is ordered by the dealer on or after the date
25 of notification of termination;

26 (B) is acquired by the dealer from a source other
27 than the supplier, unless the equipment or repair part was ordered

1 from, or invoiced to the dealer by, the supplier;

2 (C) is not in new, unsold, undamaged, or complete
3 condition, subject to the provisions of this chapter relating to
4 demonstrators; and

5 (D) is not returned to the supplier before the
6 90th day after the later of:

7 (i) the effective date of termination of a
8 dealer agreement; or

9 (ii) the date the dealer receives from the
10 supplier all information, including documents or supporting
11 materials, required by the supplier to comply with the supplier's
12 return policy.

13 (b) The supplier will be required to repurchase a repair
14 part in a broken or damaged package for a repurchase price that is
15 equal to 85 percent of the current net parts cost for the repair
16 part if the aggregate current net parts cost for the entire package
17 of repair parts is \$75 or more.

18 (c) Subsection (a)(6)(D) does not apply to a dealer if the
19 supplier did not give the dealer notice of the 90-day deadline at
20 the time the applicable notice of termination was sent to the
21 dealer.

22 [Sections 57.359-57.400 reserved for expansion]

23 SUBCHAPTER I. ACTIONS AND REMEDIES

24 Sec. 57.401. CIVIL ACTION; INJUNCTIVE RELIEF. (a) If a
25 supplier violates any provision of this chapter, a dealer may bring
26 an action against the supplier in a court of competent jurisdiction
27 for damages sustained by the dealer as a consequence of the

1 supplier's violation, including damages for lost profits, together
2 with the actual costs of the action, including the dealer's
3 attorney's fees and paralegal fees and the costs of arbitrators.
4 The dealer may also be granted injunctive relief for unlawful
5 termination.

6 (b) A remedy provided by this section is not exclusive and
7 is in addition to any other remedy permitted by law.

8 Sec. 57.402. CHOICE OF REMEDIES. The provisions of this
9 chapter are supplemental to any dealer agreement between the dealer
10 and the supplier that provides the dealer with greater protection.
11 A dealer may elect to pursue its contract remedy or the remedy
12 provided by state law, or both. An election by the dealer to pursue
13 those remedies does not bar the dealer's right to exercise any other
14 remedies that may be granted at law or in equity.

15 SECTION 3. Chapter 55, Business & Commerce Code, is
16 repealed.

17 SECTION 4. (a) Chapter 57, Business & Commerce Code, as
18 added by this Act, applies to:

19 (1) a dealer agreement entered into or renewed on or
20 after the effective date of this Act; and

21 (2) a dealer agreement that was entered into before
22 the effective date of this Act, has no expiration date, and is a
23 continuing contract.

24 (b) A dealer agreement entered into before the effective
25 date of this Act, other than a dealer agreement described by
26 Subsection (a)(2) of this section, is governed by the law as it
27 existed on the date the agreement was entered into, and the former

1 law is continued in effect for that purpose.

2 SECTION 5. This Act takes effect September 1, 2011.